

Internal Revenue Service
memorandum

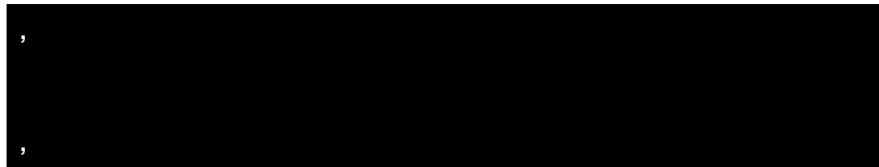
date: SEP 06 1991

to: Director, Internal Revenue Service Center
Kansas City, MO
Attn: Entity Control

from: Technical Assistant
Employee Benefits and Exempt Organizations

subject: CC:EE:3 - TR-45-1084-91
Railroad Retirement Tax Act Status

Attached for your information and appropriate action is a copy of a letter from the Railroad Retirement Board concerning the status under the Railroad Retirement Act and the Railroad Unemployment Tax Act of:



We have reviewed the opinion of the Railroad Retirement Board and, based solely upon the information submitted, concur in the conclusion reached by the Board that

is not an employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

(Signed) Ronald L. Moore

RONALD L. MOORE

Attachment:

Copy of letter from Railroad Retirement Board

cc: Mr. Gary Kuper
Internal Revenue Service
200 South Hanley
Clayton, MO 63105

008884

UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD
844 RUSH STREET
CHICAGO, ILLINOIS 60611

BUREAU OF LAW

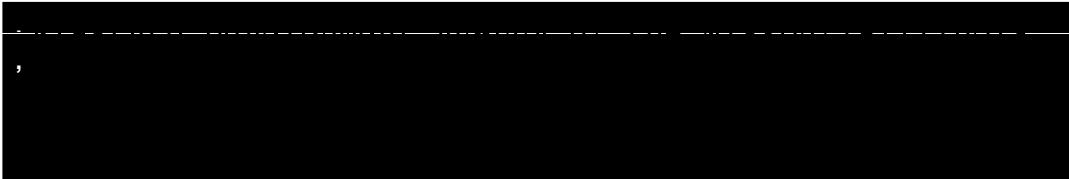
JUN 26 1991

Assistant Chief Counsel
(Employee Benefits and
Exempt Organizations)
Internal Revenue Service
1111 Constitution Avenue., N.W.
Washington, D.C. 20224

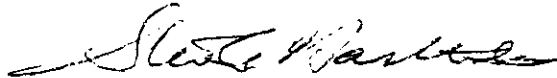
Attention: CC:IND:1:3

Dear Sir:

In accordance with the coordination procedure established between the Internal Revenue Service and this Board, I am enclosing for your information a copy of an opinion in which I have expressed my determination as to the status under the Railroad Retirement and Railroad Unemployment Insurance Acts of the following:



Sincerely yours,



Steven A. Bartholow
Deputy General Counsel

Enclosure

MEMORANDUM

JUN 20 1991

TO: Director of Research and Employment Accounts

FROM: Deputy General Counsel

SUBJECT: [REDACTED]
[REDACTED] - Employer Status

This is in response to your Form G-215 dated April 19, 1991, wherein you asked whether the [REDACTED] (hereafter [REDACTED]) is an employer under the Railroad Retirement and the Railroad Unemployment Insurance Acts.

According to a letter dated [REDACTED], from [REDACTED], Deputy Executive Director/General Manager, [REDACTED] is "a body, corporate and politic, organized and existing under a [REDACTED] compact between the States of [REDACTED] and [REDACTED] ratified by Congress, [REDACTED], approved [REDACTED] as amended." [REDACTED] is in the process of constructing an [REDACTED] mile light rail line to connect downtown [REDACTED] with [REDACTED] and [REDACTED].

In a telephone conversation with a member of my staff on [REDACTED], [REDACTED] stated the line will be operational in [REDACTED]. It would be operated by [REDACTED], just as [REDACTED] now operates a bus system. Finally, the light rail system will have electrical motive power. As this line will not be operational for some time, it would be premature to render an opinion as to the status of [REDACTED] as an employer under the Acts on the basis of these operations.

In acquiring the right of way for the light rail system, [REDACTED] acquired a line of railroad from the [REDACTED] pursuant to a Notice of Exemption filed on [REDACTED]. See ICC Finance Docket No. [REDACTED]. [REDACTED] has assumed the obligations of a common carrier on the acquired line. Since [REDACTED], this line has been operated under a contract by [REDACTED], (hereafter [REDACTED]), an employer under the Acts ([REDACTED]). In his telephone conversation on [REDACTED], [REDACTED] stated that when the light rail line begins operations it will be run separately from the freight service presently provided by [REDACTED].

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As you are aware, the definition of an employer is found in section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231 (a)(1)) and in a substantially similar provision of the Railroad Unemployment Insurance Act. An employer is defined, in pertinent part, to include:

"(i) any express company, sleeping-car company, and carrier by railroad, subject to subchapter I of chapter 105 of Title 49 [the Interstate Commerce Act];

(ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad,
* * *."

In general, (former) Part I of the Interstate Commerce Act applies to common carriers engaged in the transportation of passengers or freight, wholly or in part by railroad, in interstate commerce. A governmental unit can be a common carrier so as to be an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts. See U.S. v. California, 297 U.S. 175 (1936).

As a common carrier [REDACTED] has a residual duty to operate the freight line which it has hired [REDACTED] to operate. The Board has previously held that a company that retains a residual duty to provide service over track which it owns is an employer under the Acts. See Legal Opinion L-40-593, approved by Board Order 41-10. However, in Board Order 89-74 the Board held that a lessor employer, which had sold all its railroad assets so that the lessor no longer had the equipment necessary to resume railroad operations, was no longer an employer under the Acts. See appeal of Board of Trustees of the Galveston Wharves, B.O. 89-74, April 24, 1989.

In this case [REDACTED] has never had any railroad equipment. It is primarily a government agency established to provide mass transit services to the [REDACTED] metropolitan area. It is not now operating a railroad nor does it have the capability to do so. As such it is analogous to the

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Massachusetts Bay Transportation Authority, which was held not to be an employer under the Acts because it had never commenced operation of a rail line, but merely contracted with operating companies for operation of the line. See Legal Opinion L-90-160.

Based on the above, it is my opinion that [REDACTED]
[REDACTED] is not an employer under the Acts.

An appropriate Form G-215 is attached.


Steven A. Bartholow

Attachment